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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,607	02/27/2004	Masakazu Bamba	FUS 21.005	9057
26304	7590	08/10/2007	EXAMINER	
KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585			JEAN, FRANTZ B	
ART UNIT		PAPER NUMBER		
2154				
MAIL DATE		DELIVERY MODE		
08/10/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/789,607	BAMBA MASAKAZU	
	<b>Examiner</b>	<b>Art Unit</b>	
	Frantz B. Jean	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 27 February 2007.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-19 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-19 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
     Paper No(s)/Mail Date 2/27/04.

4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

This is a first office action in response to application for patent filed on 02/27/04. Claims 1-19 are presented for examination.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 02/27/04 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Wong et al. hereinafter Wong US publication number US 2003/0193898 A1.

As per claims 1 and 19, Wong teaches a communication apparatus in a communication network in which a plurality of routes can be set with respect to a destination (see fig 1), comprising: a line condition acquiring unit that acquires a line condition of a communication line in each route (see fig 7; abstract; par 0025); a communication cost

calculating unit that calculates a communication cost of each route (fig 1; par 0103-0104; par 0164-0182), based on the line condition of the communication line in the route; and a route selecting unit that selects a route from the plurality of routes based on the communication cost calculated (fig 1; par 0076-0087).

As per claim 2, Wong teaches a communication apparatus according to claim 1, further comprising a communication cost outputting unit that outputs the communication cost to outside (par 0146-0151).

As per claim 3, Wong teaches a communication apparatus according to claim 1, wherein the line condition acquiring unit acquires a service condition of the communication line, and the communication cost calculating unit calculates the communication cost based on the service condition (see par 0164-0181).

As per claim 4, Wong teaches a communication apparatus according to claim 1, wherein the line condition acquiring unit acquires a failure information, that is information about presence or absence of a failure in the communication line, and if the failure is present, the communication cost calculating unit calculates the communication cost based on a type of the failure (par 0004).

As per claim 5, Wong teaches a communication apparatus according to claim 1, wherein the line condition acquiring unit acquires a reserve line information, that is

information about presence or absence of a reserve line in the communication line, and if the reserve line exists, the communication cost calculating unit calculates the communication cost based on a type of the reserve line (par 0026, 0029, 0142 and 0197; alternate path and second explicit route).

As per claim 6, Wong teaches a communication apparatus according to claim 1, wherein the line condition acquiring unit acquires the line condition at regular intervals (par 0088; determine paths more quickly).

As per claim 7, Wong teaches a communication apparatus according to claim 1, further comprising an inputting unit to input a communication of each route, wherein the route selecting unit selects the route from the plurality of routes based on the communication cost input (fig 1; par 0076-0087).

As per claim 8, Wong teaches a communication apparatus according to claim 1, further comprising: a communication cost acquiring unit that acquires a communication cost of each route from outside, wherein the route selecting unit selects the route from the plurality of routes based on the communication cost acquired (fig 1; par 0076-0087).

As per claim 9, Wong teaches a communication apparatus according to claim 1, further comprising a storage unit to store the communication cost calculated (par 0104; memory means).

Claims 10-18 are method claims of the apparatus claims 1-9. They contain the same limitations. Therefore, they are rejected under the same rationale.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ji et al disclose adjusting splitting factor associated with congested and alternative links (see abstract).

Benmohamed discloses new network cost; reconfiguring network cost (fig 2; par 0079-0081, 0090).

Hsu discloses route selection based on cost (abstract).

Applicant is requested to consider the prior art of record upon responding to this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz B. Jean whose telephone number is 571-272-3937. The examiner can normally be reached on 8:30-6:00 M-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Frantz Jean



FRANTZ B. JEAN  
PRIMARY EXAMINER